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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/379,704 08/24/99 BURKE

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EXAMINER

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ART UNIT	PAPER NUMBER
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3634

DATE MAILED:

09/05/00

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/379,704

Applicant(s)

ROBERT P. BURKE

Examiner

KHOA TRAN

Group Art Unit

3634



☒ Responsive to communication(s) filed on Aug 24, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-37 is/are pending in the application.

Of the above, claim(s) 37 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-36 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 37 are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Aug 24, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-36, drawn to an apparatus, classified in class 211, subclass 59.3.
- II. Claim 37, drawn to a method of displaying products, classified in class 312, subclass 114.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the apparatus of Group I can be used in another materially different process. For example, the apparatus as set forth by claim 1 can be used in a process involving a single track and does not require any lateral adjustment. Moreover, one can perform the lateral adjustment before placing products in the tracks.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Robert J. Roby on August 21, 2000 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-

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36. Affirmation of this election must be made by applicant in replying to this Office action.

Claim 37 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

The drawings are objected to because of the following reasons: Figure 1 fails to show the broken line cross section for Figure 6 from which the cross section it taken. Further, Figure 1 does not appear to correspond to the front view of Figure 2 and the sectional perspective view of Figure 5. In particular, Figure 1 does show the extending ribs "94" thereon the supporting surface (76). With respect to Figure 5, the reference numeral "90" is not connected to the respective part to which it refers. Further, the figure fails to show reference numeral "76" as described on page 9, line 6. With respect to Figures 6 and 7, the fragment parts or sectional view of Figures 6 and 7 are not corresponding to Figures 1 and 3. It should be noted that the spacer member (140) on Figures 6 and 7 are not drawn to be the same as Figures 1-3. It is required that all fragment part or cross sectional view from which the figure has been taken from should be shown to have the same structure in order for the purpose of intention to provide a better understanding of the figure. With respect to Figure 8, it is unclear whether or not the Figure 8 is the same embodiment of Figures 1-5 or is it another embodiment. Note that Figure 8 fails to show the roll spring being

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attached by a fastener (102), see Figure 5, but rather the roll spring is being attached to the end clip (60). Further, Figure 8 fails to show reference numeral "102" as described on page 11, line 9. Relatively, Figures 6-8 fail to show reference numeral "14" as described on page 10, line 13. Figure 9, both reference numerals "128" and "118" have been used to designate the same part. Figure 10 fails to show reference numeral "90" as described on page 9, line 23. Corrections are required.

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

Specification

The disclosure is objected to because there are numerous reference numerals that have inconsistent terminology associated therewith. Specifically, on page 9, line 6, reference numeral "78" references a "tie down surface" while on page 12, line 4, it is referred to as "rails/ridges." Similarly, reference numeral "140," see page 11, lines 12 and 15, and reference numeral "122," see page 12, lines 1, 19 and 29, possess similar inconsistencies. Appropriate corrections are required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the specification fails to teach the spacer block of how to increase and/or decrease the separation of the tracks or tracks and dividers to accommodate merchandise of different width without undue experimentation.

Claims 3, 8, 10, 12, 17, 18, 23, 24, 26, 34 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 3, the claim is incomplete for omitting the necessary structural cooperative between the spacer and pusher blocks in order for the recited function to be enabled. Note that there is no structural relationship has been set forth between the claimed elements for the function of the claim to be accomplished. Claim 8 removing previously recited limitation of claim 7 by reciting that the track and dividers are formed in a single piece. This is improper. Note that claim 7 sets forth that the track and dividers are not unitarily formed. Claim 10 appears to be misdescriptive and/or inaccurate because there is no support in the drawings for the races are being in segments. With respect to claim 12, it appears applicant is improperly seeking to mix features from a separate embodiment. Claim 18 is an improper *Markush-type* claim because various structures are not from an art-

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recognized grouping. Further, --and-- should be used, not “or”. Claim 17 is rejected for the same reasons as claim 18. Claim 23 is rejected for the same reasons as claim 3. Claim 24 fails to positively set forth what is being claimed. Note the recitation of the word “optionally.” With respect to claim 26, the recitation of “or” renders the claim indefinite because it is unclear to which one of the two nonequivalent alternative structures the applicant is positively set forth. Further, it appears applicant is seeking to mix features from a separate embodiment, see page 8, lines 27-29. With respect to claim 34, there is no antecedent basis for “one surface” and “the other surface,” lines 12 and 13-14. Further, it is unclear to what are the recited surfaces referring to thereon the track. Further still, the claim only sets forth for the first and second pair of surfaces for the track only and not for the product pusher. Claim 35, there is no antecedent basis for “the other surface,” line 4.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al. Johnson et al. disclose an adjustable shelving that has a pusher block (12) with opposing flanges (54a, 54b, 56a, 56b) attached to two generally T-shaped ridges (24a, 24b) on a track. The

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opposing flanges comprising a set of outside flanges (54a, 54b) and a set of inside flanges (56a, 56b) that extend below the pusher block. See Figures 1-3.

Claims 7, 9, 11, 14, 20, 22, 29, and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant's submitted prior art of Jackle, III et al. ('236). Jackle, III et al. disclose a display track that is removably attached to a frame that has a front panel and a rear panel. See Figure 4 for the front attachment and see Figure 5 for the rear attachment of the track. See Figures 1-6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-14, 20-22, 26, 29, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkinson in view of Jackle, III et al. Hawkinson discloses a track system comprising a removable track (10) that is detachable to the front panel (11) and dividing walls (16), a removable pusher block (14) that has opposing flanges of inside (65) and outside (57) flanges cooperative with the track in order to reciprocate along the track, a plurality of rails (22) that are in configurations of general T-shaped ridges supported by vertical flanges (23), and a plurality of dividers (27, 28) that have configurations of an upside-down T-shape or L-shape in

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cross section. The front panel of Hawkinson has a transparent extending wall (33) extending above the race (37). See Figures 1-8. Jackle, III et al. teach a track system that is removably connected to the races (270, 280) of the front (210) and rear (212) panels. A roll spring (269) that is cooperative with the pusher block (250) so that the pusher block can reciprocate along the track. Considering Hawkinson and Jackle, III et al. taken as a whole. It would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the track system of Hawkinson with the provision of detachable front and rear panels and the usage of roll spring to reciprocate the pusher block as taught by Jackle, III et al. in order to obtain the invention as specified in claim because it is well within the level of skill of one of ordinary skill to utilize known features of the art for the purpose that they are known.

Claims 3 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkinson in view of Jackle, III et al. as applied to claims 1, 2, 4-14, 20-22, 26, 29, and 30-36 above, and further in view of Pappagallo et al. Pappagallo et al. teach a track system having a spacer block (100) that fits onto a pusher block (101). See Figure 4. It would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the pusher block of Hawkinson with a spacer block fits onto the pusher block as taught by Pappagallo et al. in order for the spacer block enable to accommodate pushing the item that is taller and wider than the pusher block.

Claims 23, 24 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkinson in view of Jackle, III et al. as applied to claims 1, 2, 4-14, 20-22, 26, 29, and 30-36

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above, and further in view of Markson. Markson teaches a track system having the front panel retaining wall that is in a rearward angle toward the rear panel. See Figures 20 and 21. Further, Markson teaches a spacer block stopping member (94, 97) holding the pusher block (90) at a distance from the front panel. See Figures 1-24. It would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the retaining wall and the pusher block of Hawkinson with the retaining wall that is rearwardly inclined and the pusher block having a spacer block stopping member thereat the front of the pusher block as taught by Markson in order for the rearwardly inclined retaining wall to prevent the products thereon the track from tipping over the track and the spacer block stopping member is to prevent the pusher block from damaging the front panel.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkinson in view of Jackle, III et al. as applied to claims 1, 2, 4-14, 20-22, 26, 29, and 30-36 above, and further in view of Burchell. Burchell teaches the usage of fastener means (25) to secure the side panel (24) to the track frame. See Figures 8 and 9. It would have been obvious matter of choice of design to one of ordinary skill in the art at the time of invention was made to provide the track system of Hawkinson with the provision of fastener means to secure the side panel to the track frame as taught by Burchell in order for the purpose of not having detachable side panels for the track system.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkinson in view of Jackle, III et al. as applied to claims 1, 2, 4-14, 20-22, 26, 29, and 30-36

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above, and further in view of Gold. Gold teaches the track that is made by lubricious material with silicone coating. See row 3, lines 35-43. It would have been obvious to one of ordinary skill in the art at the time of invention was made to made the track system of Hawkinson with material that is formed of lubricious material with coated silicone as taught by Gold in order for the purpose of having the track surface that is low in friction coefficient.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Robertson, Beeler et al., Johnson, Finnely et al., Leahy, J. J. Jacobson, Ide et al., Anderson et al., and Fredrickson are cited to show similar configurations of design.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or 305-3598.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Khoa Tran

August 21, 2000



Daniel P. Stodola
Supervisory Patent Examiner
Group 3600